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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91213393
Party	Defendant BNA Wine Group, LLC
Correspondence Address	Robert L. Brewer, Paige W. Mills and Mar BASS, BERRY & SIMS PLC 150 3RD AVE S STE 2800 NASHVILLE, TN 37201-2017 UNITED STATES trademarks@bassberry.com
Submission	Answer
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Date	12/04/2013
Attachments	Humble Pie Answer.pdf(416057 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In re the matter of the Application Serial No: 85951383

For the Mark: HUMBLE PIE

Filed on: June 5, 2013

Published in the Official Gazette on November 5, 2013

One True Vine, LLC,

Opposer,

v.

BNA Wine Group, LLC,

Applicant.

ANSWER TO NOTICE
OF OPPOSITION

Opposition No.: 91213393

ANSWER TO NOTICE OF OPPOSITION

Applicant, BNA Wine Group, LLC, having a principal place of business at 209 10th Ave. South, Suite 521, Nashville, Tennessee 37203 ("Applicant") answers the Notice of Opposition (the "Notice") filed on behalf of One True Vine, LLC, having its principal place of business at 1050 Adams Street, Suite C, St. Helena, California 94574 ("Opposer"), as follows:

1. Denied.
2. Applicant admits that Opposer purports to be the owner of U.S. Registration No. 3,800,333 for the mark CHERRY PIE for use with "wines" in International Class 33 and that the application appears to have been filed on September 15, 2008 and registered on June 8, 2010.
3. Admitted.

4. Admitted.

5. Applicant repeats and realleges its answers in the preceding paragraphs 1-4 as if fully set forth herein.

6. Applicant admits that Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d), prohibits registration on the Principal Register of a mark that consists of or comprises a mark which so resembles a mark previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake or to deceive. Applicant, however, denies all inferences contained in Paragraph 6, specifically the inference that registration of Applicant's mark should be refused under Section 2(d) of the Lanham Act.

7. Applicant admits that Applicant uses its mark on wine but is without sufficient knowledge or information to form a belief as to the goods or services offered under Opposer's mark and therefore denies the same.

8. Denied.

9. Applicant admits the Trademark Trial and Appeal Board has authority under 15 U.S.C. § 1068 to refuse to register Applicant's mark; however, Applicant denies there is a basis upon which to do so.

Applicant denies that Opposer is entitled to any relief, including the relief requested in the WHEREFORE clause of its Notice.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. The Notice fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

2. Although Applicant filed its application based on intent to use, use of the mark in interstate commerce has begun. During the time of actual use, there have been no incidents of actual confusion between the parties' marks. Continued use of the respective marks and registration of Applicant's mark will not cause confusion or damage Opposer.

THIRD AFFIRMATIVE DEFENSE

3. The Opposition is barred by the equitable doctrines of waiver, estoppel, unclean hands and/or acquiescence.

FOURTH AFFIRMATIVE DEFENSE

4. Applicant's mark HUMBLE PIE and Opposer's mark CHERRY PIE are not so closely related as to cause a likelihood of confusion, mistake or deception, and there is no likelihood of confusion due to the continued use of the marks by the parties.

Applicant reserves all rights, including but not limited to the right to add additional affirmative defenses as discovery develops and facts become known to it.

PRAYER FOR RELIEF

WHEREFORE, Applicant requests judgment dismissing Opposer's Notice of Opposition and this proceeding in its entirety with prejudice, and that Applicant's application for the HUMBLE PIE mark (Serial No. 85951383) be registered.

Respectfully submitted,

Dated: Dec 4, 2013

By: Martha Allard

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*Attorneys for Applicant,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer to the Notice of Opposition was served on the date indicated below by email and by placing a copy in the U.S. Mail, postage prepaid as first class mail, and addressed to the following attorneys of record:

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Dated: Dec. 4, 2013

Marian Moore
Name: